



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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B-176466

December 20, 1972

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Cole and Groner  
1730 K Street, N. W.  
Washington, D. C. 20006

Attention: Alan Y. Cole, Esq.

Gentlemen:

We refer to your letter dated October 31, 1972, and prior correspondence in connection with a protest filed on behalf of Massa Division, Dynamics Corporation of America (Massa), under invitation for bids N00024-72-B-3372, issued by the Naval Ship Systems Command, Washington, D. C.

The invitation, issued on March 27, 1972, with bid opening, as extended, on May 3, 1972, solicited bids for a multi-year (4 years) procurement of 69 AN/SQS-23, 208A transducers, with additional transducer elements, maintenance repair parts and data. The following five bids were received:

Multi-Year Prices

<u>Bidder</u>	<u>Offer A</u> <u>(Without First Article)</u>		<u>Offer B</u> <u>(With First Article)</u>	
	<u>Unit Cost</u>	<u>Total</u>	<u>Unit Cost</u>	<u>Total</u>
1. Massa	\$35,400	\$2,457,079.20		
2. Hazeltine	36,577	2,533,583.00		
3. Harris ASW Division General Instrument			\$37,700	\$2,615,400.00
4. Honeywell, Inc.			41,083	2,843,566.95
5. Marine Resources, Inc.			42,200	2,918,190.00

The contracting officer determined that Massa was not a responsible bidder and proposed to award the contract to Hazeltine as the next low

bidder. By letter dated July 10, 1972, Massa protested this determination to our Office. In response to the initial protest the activity has provided us with the following rationale in support of their determination:

"Background

"It is believed that a brief review of this Command's procurements of the 208A Transducer, an improved, refined version of the earlier 208 is pertinent. The first purchase of the 208A was in 1967 under Contract N00024-67-C-1406, issued 16 May 1967, for 29 208A transducers at a unit price of \$65,700 for domestic use (24 units) and a unit price of \$66,200\* for foreign use (5 units) was sole source from Massa.

"In 1968, having acquired a data package for competitive procurement under the 1967 procurement, an IFB was issued for 54 208A transducers. Because of an early delivery requirement, prospective bidders were advised at a bidder's conference, and in writing, that, if anyone other than Massa were selected for award, it would be necessary to make a sole source award to Massa for 12 equipments. Thus, in this 1968 procurement, Massa had the advantage of bidding a larger quantity than any other bidder as well as a waiver of preproduction requirements as the only prior producer. Bids were opened in October 1968 with the following results:

<u>Bidder</u>	<u>Unit Price</u>
Hazeltine	\$36,926
General Instrument	46,168
Edo Western	47,294
Honeywell	51,296
General Dynamics	54,343
Chesapeake Instrument	55,490
Massa	61,300
Sangamo Electric	64,711

\*The difference in price was because of the more stringent requirements for packaging for overseas shipment.

"Award was made to Hazeltine on 25 October 1968 and its performance under the contract has been satisfactory.

"After the award was made to Hazeltine under the 1968 IFB as indicated, a sole source award was made to Massa for 12 transducers under Contract N00024-70-C-1009, at a unit price of \$63,500. This award was necessary to meet production delivery requirements before delivery could be made by Hazeltine because of the first article testing required of Hazeltine, but waived for Massa.

#### "Discussion

"From the foregoing, it is clear that Massa's price under the present IFB is far less than its 1968 bid price (\$35,400 vs \$61,300) and its price for the 12 units awarded it in 1968 (\$35,400 vs \$63,500), raising the question whether award of this multi-year procurement would not result in a loss contract which Massa could not afford. The financial breakdown for the parent company, Dynamics Corporation of America (DCA) \* \* \* clearly established that Massa is in no position to absorb a loss. In this situation this Command considered it its duty to make full inquiry of Massa regarding its actual costs of producing the 208A under the 1967 contract (unit price \$65,700) and the 1968 contract (unit price, \$63,500) and how Massa had arrived at its bid price under the present IFB. Accordingly, on 5 June 1972, Massa's parent corporation, DCA was requested to furnish the actual costs incurred under these earlier contracts and any figures used to develop Massa's bid price for the present procurement. At a meeting held at this Command on 14 June 1972, Mr. Frank Paradise, Group Vice President of DCA presented the figures for unit costs/pricing \* \* \*. This presentation demonstrates that Massa's bid price of \$35,400 per unit represents a loss of at least some \$10,000 per equipment, for a total loss of some \$700,000. From DCA's financial breakdown \* \* \* it was clear that DCA was in no position to sustain such a loss. Accordingly, the Contracting Officer determined in accordance with ASPR 1-903.1 and 1-904.1 that he could not make a positive determination that Massa/DCA was a responsible contractor for this procurement."

In addition, the Navy points out that on August 2, 1972, DCA, Massa's parent corporation, filed a petition under the provisions of Chapter XI of the Bankruptcy Act, 11 U.S.C. 701, in the United States District Court for the Southern District of New York. Subsequently, on August 14, 1972, a meeting was held between agency personnel and representatives of Massa, at which time that firm's representatives submitted information regarding the company's financial status as of June 30, and an additional cost breakdown of its bid. After a review and analysis of this material the procuring activity reaffirmed its determination that Massa's bid price would result in a loss and that it does not possess the financial resources to perform the subject contract.

You assert that the procuring activity's conclusion that Massa's bid price would result in a loss is erroneous. You contend that the procuring activity's projected loss of \$700,000 contained in its administrative report dated August 3, is not explained and cannot be supported by the cost analysis furnished by Massa, which merely lists its costs for this procurement and its two previous contracts. In addition, you cite the reduction of the projected loss figure to \$500,000 in the Navy's report dated August 25, as indicative of the unreliability of both reports.

It appears from the record that the different projected loss figures resulted from the fact that additional cost figures were made available after the initial report was completed. The procuring activity's evaluation of Massa's proposed costs submitted on August 10, 1972, contains the following overall conclusion:

"Review of reference (a) (Massa's cost Data) indicates several serious deficiencies relative to financial risk which may adversely affect the bidder's performance on a potential contract for the subject equipments. Namely, the omission of inflation factors, the use of four year (multi-year) quantities and increased productivity of labor beyond experienced norms. \* \* \*"

In addition to making corrections for these omissions, the analysis includes a determination of the learning/cost curve trend for materials, assembly labor, and engineering labor under the prior contracts and application thereof to Massa's cost figures for this procurement. From this analysis, it is concluded that the loss will be in excess of \$500,000.

It appears from the record that much of the difference between Massa's estimated costs of performance and the Navy's estimates of these costs turns on the projected costs of material and assembly labor. For example, on the first year's requirement of 20 units, the Navy's estimate of material costs exceeds Massa's by over \$6,300 per unit, and for assembly labor, the Navy's estimate exceeds Massa's by more than \$4,100 per unit.

You contend that Massa's cost projections should have been accepted by the Navy because Massa based its material cost estimate on firm vendor quotations for the entire 69 units and its labor costs were determined in accordance with a fixed wage rate schedule in its union contract which you state is effective until 1975.

The Navy reports Massa has not verified its alleged vendor quotations and wage rates to the Navy's satisfaction. Accordingly, the Navy developed its own estimates based on actual unit costs incurred by Massa under its prior 12 unit contract, as adjusted by a learning curve and by a factor for inflation. Based on the evidence contained in the record before us we are unable to conclude that the Navy's refusal to rely upon Massa's material and labor cost estimates was arbitrary.

You also contend that the Navy's cost projections are unrealistic because these projections are computed on the basis of the four separate annual quantities rather than the full 69 unit quantity. You believe that ASPR 1-322.1(b)(3), which states in part that multi-year procurements are appropriate in situations where they provide an opportunity for savings through continuity of production over long periods of time, dictates that total quantity projections should be made. Further, you state that the Navy's entire analysis is predicated upon a delivery schedule extending over a four-year period, whereas Massa's manufacturing cycle is only 28 months, plus an 8 month contingency period. You contend that Massa's projected manufacturing cycle is more realistic than Navy's projected cycle.

It is evident from the terms of the invitation that the Navy is not bound to order the total four-year quantity, nor is the contractor bound to incur costs necessary to produce the entire quantity unless sufficient funds are available for subsequent years. See clause No. 85 of the solicitation entitled "Limitation of Price and Contractor Obligation." Accordingly, the Navy decided to base its cost estimates on separate yearly quantities. In this regard we note that the Navy's cost estimates do reflect a downward trend for each succeeding year based on the continuity of production. Thus, the projected unit cost (exclusive of G&A) for the last yearly quantity is approximately 30 percent lower than the projected unit cost for the first year. It

is our opinion that the Navy's method of estimating the costs of performance on the basis of yearly quantities is not contrary to either the terms of the solicitation or ASPR 1-322.1(b)(3).

You also contend that the specifications for the transducers called for by the subject invitation have been relaxed resulting in reduced production costs. While the procuring activity agrees that the impedance tolerance requirement and the scatter test tolerance limit have been relaxed, it states that other changes, consisting of requirements for molding of the element cap to the element cable, for a longer cable, and for X-ray of the aluminum casting, result in a more stringent overall specification than called for in the previous procurements and at least negate any reduction in costs.

You also argue that Massa's much lower bid (\$35,400) in this procurement as compared to its earlier contract prices (\$65,700 and \$63,500, respectively), is not indicative of a loss because of the greater quantities called for under this solicitation, which is 69 units over a four-year period. You point out that the first contract was for only 29 units and Massa's price of \$65,700, included its original design effort, production engineering, and tooling, as well as manufacturing costs. With regard to Massa's next contract, you point out that while the quantity called for was only 12 units, it bid a lower unit price of \$63,500. However, in connection with this second procurement, we note that Massa bid \$61,300 on 66 units, but Hazeltine got an award for 54 units at a price of \$36,926, and Massa received a negotiated award for 12 units at the \$63,500 price. Therefore, we are unable to fully accept your argument that the larger quantity in this procurement accounts for the much lower price, without indicating a loss.

The agency has also determined, based on a review of DCA's 1971 annual report and interim financial statement current as of June 30, 1972, that DCA, and consequently Massa, does not possess the requisite financial strength to perform the subject contract. It is also the procuring activity's position that DCA's involvement in the Chapter XI proceedings compounds this problem since a reorganization plan has yet to be approved by the creditors or the court. The procuring activity fears that if award is made to Massa either the court or the creditors might elect not to perform on what Navy believes to be a loss contract.

You urge that the pendency of the Chapter XI proceedings cannot be relied on as a basis for denying the award to Massa. In this connection, you cite B-153478, January 18, 1965, and B-169549, July 8, 1970, wherein this Office upheld awards to contractors subject to similar proceedings. It is clear that in both of the above-cited

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cases our sustaining of the agency determination that the contractors were financially responsible despite the pendency of these proceedings was based upon our recognition of the broad administrative discretion in such matters. Those cases do not stand for the proposition that procurement personnel may not reach the opposite conclusion. It is our opinion that the procuring activity did not act improperly in relying on the Chapter XI proceeding as a factor underlying its determination that Massa is not a responsible contractor, especially since a reorganization plan has yet to be approved.

Although you have pointed out that both the cost analysis of Massa's bid and the analysis of DCA's financial condition are subject to some criticism, we believe that a reading of the entire record supports the administrative determination that DCA/Massa does not possess a strong financial capability and it is at least doubtful whether Massa could successfully perform a multi-year contract of the amount involved here. In this regard, the applicable regulation provides, in part, that contracts shall be awarded only to responsible prospective contractors; that a prospective contractor must demonstrate affirmatively his responsibility; that the contracting officer shall make a determination of nonresponsibility if the information obtained does not indicate clearly that the prospective contractor is responsible; and that doubt as to financial strength which cannot be resolved affirmatively shall require a determination of nonresponsibility. ASPR 1-902. In recognition of the administrative discretion involved in such determinations, we see no basis for this Office to substitute its judgment for that of the contracting officer in the circumstances reported here. B-172061(2), August 24, 1971.

Accordingly, there is no legal basis for us to object to the proposed award to Hazeltine.

Very truly yours,

R.F.KELLER

Deputy Comptroller General  
of the United States